STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 6, 1999
v	No. 199750 Oakland Circuit Court
CHARLES E. WILLIAMS, Defendant-Appellant.	LC No. 93-126876 FH

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). The trial court sentenced defendant, as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to an enhanced prison term of fifteen to forty years. Defendant appeals as of right. We affirm.

Defendant was arrested following the execution of a search warrant at a Pontiac residence in March 1993. Two and a half years later, but approximately six months before his trial on that charge, he was recorded on both audio and video tape by the Pontiac Police engaging in multiple deliveries of controlled substances. These subsequent transactions were introduced against him during his trial on the 1993 charge for the stated purpose of showing his intent to deliver the cocaine seized from around his yard and residence. Defendant contends that the evidence of his other bad acts was erroneously admitted under MRE 404(b). We review a trial court's determination to admit evidence in this regard for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

Pursuant to MRE 404(b), in order for other acts evidence to be properly admitted, the prosecution must offer a relevant purpose for its introduction which does not involve character or defendant's propensity to commit the charged acts. If no such purpose can be articulated, the evidence must be excluded. When the evidence is offered for one or more non-character purposes, then, provided that there is sufficient evidence to show the other acts occurred and that they are logically relevant, the probative value of the evidence for its permitted purpose(s) is examined to see if it is substantially outweighed by unfair prejudice. *Id.* at 385.

Although the prosecution claimed that evidence of defendant's delivery of controlled substances in 1995 was admissible to prove defendant's intent to deliver in the charged offense, mechanical recitation of a facially permissible purpose, without an explanation of how the evidence relates to the stated purpose, is not sufficient to justify admission under MRE 404(b). *Id.* at 387. The prosecution in this case failed to articulate how defendant's delivery of controlled substances in 1995 was probative of his intent to deliver cocaine in March 1993, other than by way of the impermissible inference of defendant's propensity for dealing drugs. This case presents facts similar to those in *Crawford, supra,* where our Supreme Court determined that the factual relationship between a charged offense and an earlier offense was too remote to warrant admitting evidence of the earlier offense to show intent under MRE 404(b). *Id.* at 396-397. In this case, the proffered "other acts" occurred over two years after the charged offense, and shared few, if any, factual similarities with the circumstantial evidence presented in this case to prove defendant's guilt. As in *Crawford,* defendant's subsequent acts of delivering controlled substances only demonstrated that he is the kind of person who would knowingly possess and intend to deliver cocaine. *Id.* at 397. Because such character evidence is specifically prohibited by MRE 404(b), we find that the trial court abused its discretion in admitting that evidence.

However, this type of error requires reversal only if it is prejudicial. *Id.* at 399-400. That is, the error is harmless if it is highly probable that, in light of the strength and weight of the untainted evidence, the tainted evidence did not contribute to the verdict. *People v Bone,* 230 Mich App 699, 703; 584 NW2d 760 (1998). In *Crawford,* the Court found that the tainted evidence was not harmless because "the 'reverberating clang' of the evidence that the defendant sold drugs in 1988 drowned the 'weaker sound' of the other evidence properly before the jury. . . ." *Crawford, supra* at 399. However, we find the circumstantial evidence of defendant's guilt in this case to be considerably more substantial and persuasive than that offered in *Crawford.*

Possession of drugs may be actual or constructive, and may be joint as well as exclusive. *People v Fetterly,* 229 Mich App 511, 515; 583 NW2d 199 (1998). The critical question is whether the defendant had dominion or control over the controlled substance. *Id.* Intent to deliver may be inferred from minimal circumstantial evidence, including quantity, packaging, and the presence of facilitating equipment. *Id.* at 517-518. While mere association with a house, or presence, where drugs are found is insufficient to establish constructive possession, it is established "when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband." *People v Wolfe,* 440 Mich 508, 520-521; 489 NW2d 748, amended on other grounds, 441 Mich 1201 (1992).

In this case, defendant's dominion and control over the searched residence was established by his repeated presence, the fact that two vehicles in the driveway were registered to him, the fact that keys to the cars and the house were found on his person, and the recovery of identifying documents from the nightstand and dresser in one of the bedrooms. A witness' observation of defendant making quick trips to the back of the garage to an area where cocaine was subsequently discovered, the confirmation of cocaine residue in a plastic bag recovered from his trunk, and his statement to the effect of "you're not going to find any dope in this house," served to establish that he had knowledge of, and was in at least joint possession of, the cocaine recovered from the backyard. See *Wolfe, supra* at 519-524. The digital scale, substances designed for diluting drugs, the prepared foil squares which matched

the foil wrappers of the seized eleven large crack balls, the communication devices and guns, the large amounts of cash in small denominations, the amount of recovered crack cocaine, and the lack of paraphernalia associated with its ingestion, together served to establish that the crack was intended for sale. See *Fetterly*, *supra* at 515-518. Given the quantity and quality of the circumstantial evidence that defendant possessed the seized cocaine with the intention of selling it, it is highly probable that the erroneously admitted evidence of his subsequent drug sales did not affect the jury's verdict.[1]

Defendant next contends that the testimony of a police officer, who was recognized by the court as an expert in the field of narcotics investigation, amounted to an impermissible use of drug profile evidence as substantive proof of defendant's guilt. Because no objection to this testimony was raised at trial, we review this matter only to the extent that failure to address it would result in manifest injustice. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996).

Drug profile evidence is not admissible as substantive evidence of guilt. *People v Hubbard*, 209 Mich App 234, 241; 530 NW2d 130 (1995). On the other hand, expert testimony explaining the significance of seized contraband or other items of personal property is generally allowed. *Id.* at 239; *People v Williams (After Remand)*, 198 Mich App 537, 541-542; 499 NW2d 404 (1993); *People v Ray*, 191 Mich App 706, 707-708; 479 NW2d 1 (1991). Our review of the challenged testimony reveals that it was used as general education for the jury, to aid them in understanding the significance and nature of the evidence. It was not offered, nor did it serve, to establish that defendant fit a drugdealer's profile and that he was, therefore, guilty. *People v Murray*, ___ Mich App ___; ___ NW2d ___ (Docket No. 194761, issued 2/12/99), slip op pp 5-6. To the contrary, the jury was never given a compilation of characteristics purported to be typical of drug dealers, such as that presented in *Hubbard*, *supra* at 238. Therefore, admission of this testimony did not result in manifest injustice.

Finally, defendant argues that the trial court erred in not suppressing the seized evidence because the police failed to leave a copy of the supporting affidavit along with copies of the search warrant and tabulation at the searched residence. A trial court's factual determinations during a suppression hearing are reviewed only for clear error. However, application of those facts to the law is not entitled to such deference. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997). We review questions of law de novo. *Id.*

Assuming, arguendo, that MCL 780.655; MSA 28.1259(5) requires the police to leave a copy of the supporting affidavit when the grounds for a warrant's issuance are not stated on its face, given that defendant showed no prejudice from this procedural error, the trial court did not err in refusing to suppress the evidence obtained pursuant to that warrant. The record shows that the affidavit was subsequently provided to defense counsel. This Court has consistently held that technical violations of MCL 780.655; MSA 28.1259(5) do not require suppression of the evidence seized, particularly where defendant cannot articulate any harm or prejudice that resulted. *People v Lucas*, 188 Mich App 554, 573; 470 NW2d 460 (1991); *People v Meyers*, 163 Mich App 120, 122-123; 413 NW2d 749 (1987).

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins

[1] While we acknowledge that the prosecution's presentation of video tapes of defendant's 1995 drug transactions served to highlight the inadmissible character evidence and do not favor the use of such evidence under these circumstances, we are satisfied, nevertheless, that it is highly probable the jury relied on the strength and weight of the properly admitted evidence.